***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

***And***

***THE HON'BLE SRI JUSTICE D.APPA RAO***

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***WRIT PETITION No.10615 of 2006***

***Date: 31.05.2006***

Between:

M/s.M.D.R.Jewellers.

**.. PETITIONER**

AND

Additional Director of Income Tax (Investigation) and others.

**.. RESPONDENTS**

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

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**ORDER: (per the hon'ble Sri Justice L.Narasimha Reddy)**

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The petitioner is a partnership firm undertaking the business in jewellery. It is stated that it was constituted recently, in March 2005. In the affidavit filed in support of the writ petition, a detailed account is given as to the manner, in which the firm had secured its resources, such as by raising loans from Banks, duly offering the immovable property as security etc.

According to the petitioner, it purchased 16,000 grams of bullion from M/s.Mohanlal Mahendra Kumar Jewellers, Noida, Uttar Pradesh, for a sum of Rs.1,26,36,000/-. It is also stated that the transaction was arranged at the request of Mr.Kewalchand Jain of M/s. Sundeep Jewellers, Jaipur. The petitioner states that the gold purchased by it was entrusted to one Mr.Raghuveer Singh for transport to Hyderabad to be delivered to the petitioner-firm. It is pleaded that the said Raghuveer Singh has taken a flight from Delhi to Hyderabad, and that the respondents have intercepted him at the Airport. Through a panchanama, dated 30.03.2006, the 3rd respondent seized the gold from the said Raghuveer Singh.

Subsequently, the second respondent issued a notice to the petitioner to explain its relation to the seized bullion. The statement of one of the partners, Mr.Vimal Goel, was recorded on 30.03.2006. The further proceedings are in progress. The petitioner challenges the action of the respondents in seizing the gold, through panchanama, dated 30.03.2006, as illegal, arbitrary and contrary to the provisions of Section 132(1) of the Income Tax Act, 1961(for short 'the Act').

Sri D.Prakash Reddy, the learned Senior Counsel appearing for the petitioner submits that Section 132 of the Act clearly prohibits the seizure of bullion, which is stock-in-trade, and the instant seizure is in clear violation of the specific provisions of the Act. He contends that the petitioner is prepared to offer its explanation and produce such material, as is required by the respondents. He submits that the seizure of such a valuable stock would not only cripple the business of the petitioner-firm, but also would ruin its future.

The learned Standing Counsel for the Income Tax, on the other hand, submits that there is any amount of doubt, as to the relation of the person, who was carrying the bullion, with the petitioner-firm, and unless the entire enquiry into the matter is completed, it is not at all safe or advisable to release the bullion to the petitioner-firm.

The bullion, referred to above, was seized from the possession of Raghuveer Singh. When the writ petition came up for hearing on 30.05.2006, the learned Standing Counsel for the Income Tax expressed a doubt as to whether the person, from whom the material was seized, made any disclaim in favour of the petitioner or whether he has got any independent right of his own. It is in this context an affidavit is filed by Sri Raghuveer Singh. It is stated that he is an employee of Jaipur Branch of the petitioner-firm and that he was entrusted with the job of receiving bullion purchased by the petitioner from M/s.Mohanlal Mahendra Kumar Jewellers, Noida, Uttar Pradesh, and delivering the same to the petitioner-firm. He did not make any claim of his own to the goods.

The second respondent is proceeding with the enquiry into the matter. The concern of the Department is to examine whether the petitioner had maintained proper records, accounting for the purchase of the said bullion. The enquiry is in progress. One significant aspect of the matter is that the second respondent has not only issued notice of hearing to the petitioner-firm but also had recorded the statement of one of its partners. Therefore, basically, there does not exist any doubt as to the claim or ownership of the petitioner over the seized bullion. What is in doubt is whether the petitioner had accounted for it or complied with the various provisions of the Act.

Section 132 of the Act prescribes the procedure for search and seizure. The Section is very elaborate and deals with various contingencies. The Parliament inserted two provisos in the said Section through the Finance Act, 2003, with effect from 01.06.2003. They read as under:

> *[**Provided** that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade of the business.]*
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> *[**Provided also** that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business]*

From a combined reading of both the provisos, it is evident that bullion, jewellery or other valuable articles, being stock-in-trade of the business, which is found during the search, shall not be seized. It however authorizes the Officer concerned to make a note or inventory of such stock- in-trade of the business.

The facts as presented before this Court disclose to a large extent that the seized gold is stock-in-trade and thereby the said two provisos, which are part of Section 132 of the Act, get attracted. In that view of the matter, the continued seizure does not accord with the mandatory provisions of the Act.

The learned Standing Counsel had placed reliance upon an order of this Court in W.P.No.22467 of 2005, dated 17.11.2005. From a perusal of the said order, it is evident that there were allegations of clandestine business, against the petitioner therein. This Court has also referred to serious contradictions in the version presented by the petitioner therein. Reference was also made to the clandestine nature of the business. In the instant case, the learned Standing Counsel made available, the statement recorded by the Department from one of the partners of the firm and a perusal of the same does not disclose that any clandestineness was attributed to the petitioner. At any rate, the petitioner is entitled for the benefit of the provisos, referred to above. At the same time, this Court is of the view that adequate security needs to be assured for the Department.

For the foregoing reasons, we allow the Writ petition and direct release of the bullion seized by the third respondent from Mr.Raghuveer Singh on 30.03.2006, in favour of the petitioner-firm, under due acknowledgment, subject to the condition that the petitioner shall furnish bank guarantee to the satisfaction of the respondents for a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only). The bank guarantee, so furnished, as well as the return of bullion to the petitioner, shall be subject to the outcome of the proceedings, that are now pending

against the petitioner. There shall be no order as to costs.

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***(L.NARASIMHA REDDY, J)***

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***(D.APPA RAO, J)***

31st May, 2006.

Note: Issue C.C. by tomorrow.

**Jsu**/kdl

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

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